IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Civil Writ Petition No.2441 of 2006

Smt. Vijaya wd/o. Dr.R.S.Chogle
and ors. Petitioners

Vs.

The Society of Most Blessed Sacrament
and Sacred Heart of Jesus & ors. Respondents

Ms.Phiroza Irani for petitioners.

Mr.Victor Almeida for resp.nos.3 to 6.

CORAM: B.H.MARLAPALLE, J.

April 19, 2007.

P.C.

1. Heard the learned counsel for the petitioners.

The petitioners have filed RAD Suit No.127/274 of 1995 and in the said Suit the present respondents took out Interim Notice No.1174 of 2000 for being impleaded as the necessary party defendants. The Interim Notice was supported by an affidavit filed by one of the trustees, a list of documents was also placed on record. The respondent had claimed that it is a Society registered under Registration No.1860 dated 22/4/1988 and it was in fact the tenant. It

had rented out Room Nos.7 and 8 on the ground floor of the suit premises i.e. Atmaram Building, St. Francis Street, Girgaum, Mumbai on monthly rent of Rs.101/- inclusive of repair cess to one Mr. D'Mello i.e. Defendant no.1 who was one of the Trustees. It was also claimed that the suit was fraudulently filed by the landlords only against two defendants viz. Mr. F.X.V.D'Mello and Mr.Victor D'Mello without impleading the applicant as the necessary defendant. The plaintiffs had filed their say to this Interim Notice and opposed it. The learned Judge of the trial Court by his order dated 24/1/2003 rejected Interim Notice No.1174 of 2000 and, therefore, the applicants filed Revision Application No.39 of 2003 before the Division Bench of the Small Causes Court which was pleased to allow the said revision vide its judgment and order dated 22/2/2006. Hence this writ petition challenging the said order dated 22/2/2006 allowing Interim Notice No.1174 of 2000.

2. The impugned order notes that in the Written Statement filed by the original defendants it was very clearly stated that the suit premises were occupied by the applicant - Society from 1931 onwards and the original defendants had entered the premises

in 1965 and on the basis of the declaration made by the said applicant-Society. It also referred to certain documents placed on record viz. (i) Resolution dated 15th August 1999; (ii) Registration certificate issued by the Charity Commissioner; (iii) Sworn declaration by Mr. F.X.V.D'Mello of March 1975; (iv) Two letters of calendar manufacturing company dated 1st December 1951; (v) letter addressed to the landlords dated 26th March 1966; (vi) letter dated 14th July 1963 addressed by Arch Bishop House to the President of the Society; (vii) Electricity bill; (viii) letter dated 3rd October 1966 by the landlords to the applicant - Society; (ix) Letter dated 10th October 1980 addressed by the Bombay Municipal Corporation to the Secretary of the Society.

3. The above referred documents, prima facie, support the prayer of the applicant - Society for being impleaded as necessary defendant and, therefore, the Division Bench of the Small Causes Court rightly by a reasoned order set aside the order passed by the trial Court. Undoubtedly it is for the applicant - Society to prove before the trial Court its claim that it is registered and it has been in

occupation of the suit premises from 1931 or thereafter as the tenants, though defendant nos.1 and 2 were inducted by it, the landlords had inducted the Society originally as a tenant or licensee or in any other capacity and all other relevant aspects so as to establish its case that it is a de facto tenant of the suit premises and thereafter the suit will have to be considered on merits on the grounds made out by the plaintiffs. At the same time if the plaintiffs desire to amend the suit, the same will have to be considered by the trial Court on its own merits. However, there is no case made out to oust the applicant - Society at the threshold viz. that it has no locus standi for being impleaded as the defendants.

4. An apprehension was expressed before this Court by the learned counsel for the petitioners that the impugned order may be treated as an order impleading all the members of the applicant - Society. There is no reason to entertain such an apprehension because the application itself was made on behalf of the applicant - Society represented through its Trustees / Members of the Governing Body viz. Mr. Carlito Castel, Mr. Basil D'Souza, Mr.

John Cabral, Mr. Inacio Santan Gonsalves and Mr. Ronald Rodrigues. The learned counsel for the petitioners has, at this stage, referred to the plaint in RAD Suit No.1368 of 2003 filed by the very same applicant - Society so as to point out that in the said suit only three names have been pointed as the Trustees. In fact the said plaint indicates the names of Trustees/Secretary as Mr.Basil D'Souza, Mr.Carlito Castello, Mr.John Cabral and Mr.James D'Mello. At least three of these names are common and whether others like Mr. Inacio Santan Gonsalves and Mr. Ronald Rodrigues are Trustees or any other office bearers of the applicant - Society is a matter of evidence that could be recorded before the trial Court. However, in no case the Society could be represented by any person other than the Trustees or the office bearers of the Trust.

5. Having considered the arguments advanced by the learned counsel for the petitioners and the reasons set out in the impugned order, the challenge raised to the said order is devoid of merits and there is no case made out to cause interference in the said order under Article 227 of the Constitution.

6. This order will not come in the way of either of the parties to apply before the trial Court for clubbing of the pending suits for a common trial.

7. The petition is rejected accordingly.

(B.H.MARL